

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA, f/b/o  
N.B. KENNEY COMPANY, INC.  
Plaintiff

v.

ROADS CORPORATION, AND  
UNITED STATES FIDELITY AND  
GUARANTY COMPANY  
Defendants.

No. 05-10383-MLW

**DEFENDANTS ROADS CORPORATION AND UNITED STATES FIDELITY  
AND GUARANTY COMPANY'S ANSWER TO PLAINTIFF'S COMPLAINT**

NOW COMES the Defendants Roads Corporation ("Roads") and United States and Guaranty Company ("USF&G") (collectively referred herein as the "Defendants") and hereby answer the Plaintiff United States of America f/b/o N.B. Kenney Company, Inc. ("Plaintiff" or "N.B. Kenney") and assert affirmative defenses as follows:

**COUNT I**  
**(Contract-Miller Act)**

1. The allegations contained in paragraph 1 of the Plaintiff's Complaint refer to a written document which speaks for itself. To the extent that any response is required, the Defendants deny any allegations which are inconsistent with said written document.

2. The allegations contained in paragraph 2 of the Plaintiff's Complaint contain a legal conclusion which no response is required. To the extent a response is required, Defendants admit they executed a payment bond for the Project.

3. The allegations contained in paragraph 3 of the Plaintiff's Complaint refer to a written document which speaks for itself. To the extent that any response is required, the Defendants deny any allegations which are inconsistent with said written document.

4. The allegations contained in paragraph 4 of the Plaintiff's Complaint refer to a written document which speaks for itself. To the extent that any response is required, the Defendants deny any allegations which are inconsistent with said written document.

5. Defendants deny the allegations contained in paragraph 5 of the Plaintiff's Complaint.

6. Defendants deny the allegations contained in paragraph 6 of the Plaintiff's Complaint.

7. Defendants deny the allegations contained in paragraph 7 of the Plaintiff's Complaint.

8. Defendants admit the allegations contained in paragraph 8 of the Plaintiff's Complaint.

9. Defendants deny the allegations contained in paragraph 9 of the Plaintiff's Complaint.

10. Defendants deny the allegations contained in paragraph 10 of the Plaintiff's Complaint.

11. Defendants deny the allegations contained in paragraph 11 of the Plaintiff's Complaint.

12. Defendants deny the allegations contained in paragraph 12 of the Plaintiff's Complaint.

13. Defendants deny the allegations contained in paragraph 13 of the Plaintiff's Complaint.

**COUNT II**  
**(Quantum Meruit-Miller Act)**

14. Defendants hereby adopt and incorporate its responses to paragraphs 1-13 of the Plaintiff's Complaint as if fully set forth herein.

15. Defendants deny the allegations contained in paragraph 15 of the Plaintiff's Complaint.

16. Defendants hereby adopt and incorporate its responses to paragraphs 1-15 of the Plaintiff's Complaint as if fully set forth herein.

**AFFIRMATIVE DEFENSES**

**First Affirmative Defense**

The Plaintiff's claims are barred for a failure to state a claim upon which relief may be granted.

**Second Affirmative Defense**

The Plaintiff's claims are barred because it is not timely.

**Third Affirmative Defense**

The Plaintiff's claims are barred by its failure to satisfy all conditions precedent.

**Fourth Affirmative Defense**

The Plaintiff is estopped by its conduct from maintaining this cause of action.

**Fifth Affirmative Defense**

The Plaintiff's claims are barred by the doctrine of waiver.

**Sixth Affirmative Defense**

The Plaintiff's claims are barred by the doctrine of estoppel.

**Seventh Affirmative Defense**

The Plaintiff's claims are barred by the doctrine of unclean hands.

**Eighth Affirmative Defense**

The Plaintiff's claims are barred by its breaches of contract.

**Ninth Affirmative Defense**

The Plaintiff's claims are barred by the express terms of the written agreement between the parties.

**Tenth Affirmative Defense**

The Plaintiff's claims are barred in whole or in part by a right of setoff for monies owed by Plaintiff to Defendants.

**Eleventh Affirmative Defense**

The Plaintiff's claims are barred as a result of Plaintiff's failure to complete its contract work.

WHEREFORE, Defendants respectfully requests that the Plaintiff's Complaint be dismissed and that Defendants be awarded their attorney's fees and costs incurred in connection with this action together with such other relief as is just and equitable.

**JURY DEMAND**

Defendant Roads Corporation demands a trial by jury on all issues so triable.

Respectfully submitted,

ROADS CORPORATION and  
UNITED STATES FIDELITY &  
GUARANTY COMPANY

By its attorneys,

/s/ Andrew W. Daniels  
Andrew W. Daniels (BBO #552435)  
Peter Tobani (BBO #654138)  
HINCKLEY, ALLEN & SNYDER, LLP  
28 State Street  
Boston, MA 02109  
(617) 345-9000

Dated: August 4, 2005

**CERTIFICATE OF SERVICE**

I, Peter Tobani, hereby certify that on August 4, 2005 I caused a true copy of the foregoing document to be served to counsel of record via first-class mail, postage prepaid.

/s/ Andrew W. Daniels